STATE OF MICHIGAN

COURT OF APPEALS

CITIZENS FOR PUBLIC ACCOUNTABILITY & RESPONSIBLE DEVELOPMENT, STEPHEN R. EMSLEY, JAMES WESLEY WILSON, II, TERESA MARGRET ALLEN, FRANK ALAN CARLSEN, DIANE ELEANOR CARLSEN, and KEITH JAMES GRAHAM,

Plaintiffs-Appellants,

and

STEVEN H. LAWRENCE, JOHN HORTON MILLER, MICHELLE SUZANNE MILLER, and ANN MARIE KOTYLO,

Plaintiffs,

v

NORTHVILLE CHARTER TOWNSHIP BOARD OF TRUSTEES,

Defendant-Appellee.

UNPUBLISHED
May 26, 2011

No. 292311
Wayne Circuit Court
LC No. 08-124674-CZ

Before: GLEICHER, P.J., and WILDER and K.F. KELLY, JJ.

GLEICHER, P.J. (*concurring in part and dissenting in part*).

I concur in the majority's conclusion that defendant violated MCL 15.269(1), and agree with the majority's decision to remand this matter for consideration of a proper remedy. However, I respectfully disagree with the majority's holding that the posted notice satisfied MCL 15.265(4). In my view, the majority's analysis contradicts the legislative mandate that a public body supply "at least 18 hours" of "public notice" before conducting a special meeting.

The majority acknowledges that the July 24 2008 and July 29, 2008 special meetings concerned a controversial settlement with a developer that had purchased 416 acres of Northville Township land. *Ante* at 2. Defendant posted notices of the meetings on bulletin boards located within the township hall. Although the notices remained posted for at least 18 hours before each meeting, the public had access to the notices for a more limited period. Notice of the July 24, 2008 meeting was available to the public for about 12 hours, while the public had access to the

notice of the July 29, 2008 meeting for between five and six hours. No members of the public attended either of the two special meetings.

"[T]he purpose of the [Open Meetings Act] OMA is to promote governmental accountability by facilitating public access to official decision making and to provide a means through which the general public may better understand issues and decisions of public concern." *Kitchen v Ferndale City Council*, 253 Mich App 115, 125; 654 NW2d 918 (2002). The OMA seeks to achieve this fundamental purpose by repeatedly emphasizing that public bodies must meet publically. Subsection 3(1) of the OMA mandates that "[a]ll meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act." MCL 15.263(1). Subsection 3(2) of the OMA further requires that "[a]ll decisions of a public body shall be made at a meeting open to the public," MCL 15.263(2), and subsection 3(3) declares that "[a]ll deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as provided in this section and sections 7 and 8." MCL 15.263(3).[1]

Consistent with the Legislature's clearly expressed preference for transparency in government, the OMA also repetitively insists that a public body apprise the public of its meetings. According to subsection 4(b), "A public notice for a public body shall always be posted at its principal office and any other locations considered appropriate by the public body." MCL 15.264(b). Subsection 5(1) dictates that "[a] meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body." MCL 15.265(1). For regular meetings, public notice of upcoming meetings must be posted "within 10 days after the first meeting of the public body in each calendar or fiscal year." MCL 15.265(2). A "special meeting," like the two meetings at issue here, demands the posting of "a public notice stating the date, time, and place of the meeting . . . at least 18 hours before the meeting." MCL 15.265(4).

When construing a statute, this Court must ascertain and effectuate the Legislature's intent, as expressed in the words of the statute. *Bloomfield Charter Twp v Oakland Co Clerk*, 253 Mich App 1, 10; 654 NW2d 610 (2002). In discerning legislative intent, we endeavor to give effect to every word, phrase, and clause in the statute. *People v Hill*, 269 Mich App 505, 515; 715 NW2d 301 (2006). We construe an act in a manner that harmonizes its terms, thereby carrying out the legislative purpose. *Id*. "To further the purpose of the OMA, its requirements are interpreted broadly and its exemptions are interpreted narrowly." *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78, 85; 669 NW2d 862 (2003). By enacting the OMA, the Legislature signaled its intent that public bodies would endeavor to foster public participation in government. Just as "[t]he basic purpose of FOIA [the federal Freedom of Information Act, 5 USC 552] is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed," *NLRB v Robbins Tire & Rubber Co*, 437 US 214, 242; 98 S Ct 2311; 57 L Ed 2d 159 (1978), the basic purpose of the

[1] The exceptions in MCL 15.263(7)-(11) and MCL 15.267 do not apply in this case.

OMA is to permit citizens to witness and actively participate in the mechanics of their government. But citizens unaware of scheduled meetings are effectively shut out of the decision making process. To maximize the public's ability to learn of pending governmental actions, the Legislature selected specific public notice periods for all public meetings, including an 18-hour period applicable to special meetings. The definite notice periods identified in the OMA embody legislative judgments concerning the window of opportunity that must be made available to the public to learn of an upcoming meeting.[2]

I respectfully disagree with the majority's ruling that "the term 'public notice,' as used in § 5(4), MCL 15.265(4), does not inhere a specific time requirement of accessibility for which such a notice must be posted." *Ante* at 6. Construing the OMA as a whole and harmonizing its terms, I conclude that the Legislature intended that the public have access to a "public notice" for the entire designated 18-hour period. In my estimation, "public notice" means exactly that—notice made available to the public, not dark, deserted building corridors. The majority construes the OMA's notice provision in a manner that would permit a public body to notify the public of a special meeting commencing at 9:00 a.m. on a Monday by posting a notice at closing time on a Friday afternoon. Indisputably, this "notice" would frustrate the legislative purpose expressed in the statute. But with its analysis, the majority sanctions precisely such "public notice." Rather than interpreting MCL 15.265(4) expansively, the majority reads the term "public notice" out of the sentence requiring 18 hours' notice. I would hold that a public body fails to satisfy the 18-hour "public notice" requirement by posting a notice available to the public for less than 18 hours, and thus would reverse the circuit court's grant of summary disposition to defendant.

/s/ Elizabeth L. Gleicher

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[2] The Florida equivalent of the OMA, known as the Government in the Sunshine Law, Florida Statutes § 286.011, provides for "reasonable notice" of public meetings. See *Sarasota Citizens for Responsible Gov't v Sarasota*, 48 So 3d 755, 762 (Fla, 2010). Our Legislature elected to incorporate a time certain into the OMA, rather than relying on a public body's notion of the amount of time that qualifies as "reasonable" under varying circumstances.